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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 364

WILLIAM BUNN, *Petitioner*,

Versus

CITY OF ATLANTA, *Respondent*.

BRIEF AND ARGUMENT BY RESPONDENT IN OPPOSITION TO GRANT OF THE WRIT.

J. C. SAVAGE,
E. L. STERNE,
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FRANK A. HOOPER, JR.,
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PART I.

MOTION TO DISMISS.

It will be noted that the petition for certiorari in this case alleges that the Supreme Court of Georgia ruled against the petitioner on May 19, 1942, and that appears to be the final ruling by the court of last resort in the State of Georgia in this case. Consequently, we submit that the petition for writ of certiorari should have been filed within ninety days of May 19, 1942. *U. S. Code Annotated, Title* 28, *Section* 350. *Citizens Bank of Michigan City vs. Opperman,* 249 *U. S., page* 447, 63 *Law Edition, page* 701.

PART II.

NO CONSTITUTIONAL RIGHT OF PETITIONER IS INVOLVED.

Petitioner evidently proceeds upon the theory that he has a constitutional property right or franchise right to use the streets of the City of Atlanta for his own private business in such manner as he sees fit, and that for the City of Atlanta to seek to regulate his use of its streets deprives him of a constitutional right.

We submit in the first place that petitioner does not have any property rights in and to the use of the streets of the City of Atlanta for purpose of carrying on his private business. If this court upholds the ruling by the Supreme Court of Georgia in the case of *Schlesinger vs. City of Atlanta,* 161 *Ga.,* 148, that would conclude any further consideration of this case.

If, on the other hand, this court should reverse the ruling in the case of *Schlesinger vs. City of Atlanta, Supra,* that would bring us next to a consideration of the question as to whether or not the Ordinance involved in this case was or was not void.

PART III.

THE ORDINANCE IN QUESTION IS NOT VOID FOR ANY REASON ASSIGNED.

The attacks made on this Ordinance will be taken up seriatim in the same order as presented in the petition for writ of certiorari.

In Part One (c) of said petition, it is contended that the Ordinance attempts to prohibit negroes from transporting

white people and white people from transporting negroes. The pleadings in the court below, as pointed out in the decision by the Georgia Court of Appeals, makes it clear that the City of Atlanta does not rely on so much of the Ordinance as would seek to accomplish the foregoing and therefore, it is not an issue in this case.

In Part Two (a) it is contended that the Ordinance prohibits negroes from contracting with white people. The Ordinance does not do so, and any portion thereof which would seek to do so is not insisted upon by the City of Atlanta. The Ordinance allows negroes to haul white people, and white people to haul negroes.

The Ordinance does not, as contended in Part Two (b), prohibit any class of persons "from doing business with two-thirds of the population of the area affected." It permits colored people to haul white people in their vehicles, or to haul colored people, as they desire. The only limitation is that there shall be segregation of white and colored as to the individual vehicles used.

Part Two (c) is covered by our discussion of Part Two (a) above.

Part Three (a) contends that the Ordinance is "a prohibition of the exercise of a common, natural and inherent right of an individual conducting a business to enter into contract with the general public." A careful reading of the Ordinance will disclose that it does not prohibit a licensee from entering into contract with the general public, but only requires segregation of the races.

Part Three (b) contends that the Georgia Courts permit a municipality to prescribe unreasonable conditions for use of its streets. That is true. We submit, however, that the conditions in this case imposed are reasonable.

PART IV.

SEGREGATION FEATURES OF THE ORDINANCE IN QUESTION ARE REASONABLE.

This Ordinance was passed by the City of Atlanta under its police powers. When boiled down to its essential provisions, the Ordinance required the licensee to dedicate each licensed vehicle to the use of hauling either white or colored, to indicate the same on the side of the vehicle, and to use each vehicle for hauling either white or colored as the permit specified.

The Ordinance is therefore, simply an exercise of the police power by the City in the regulation of transportation of the public for hire upon its streets. Such segregation seems to have been uniformly upheld.

> "The state has power, for the safety of the public, to regulate the use of its public highways, and may prohibit on condition as it deems proper, the use of city streets as a place for the carrying on of private business." *Hodge Drive It Yourself Company vs. City of Cincinnati,* 284 *U. S.,* 335, 76 *Law Edition,* 323."

Among cases upholding segregation of the races in railway coaches we refer to *McCabe vs. Atchison, Topeka and Santa Fe Railway Company,* 235 *U. S.,* 151.

As to segregation of white and colored in private colleges see *Berea College vs. Commonwealth of Kentucky,* 211 *U. S.* 45.

In the case last cited this court held that "the right to teach white and negro children in a private school at the same time and place is not a property right."

As to the right of a state to segregate pupils in schools we refer to *Gong Lum vs. Wright,* 275 *U. S.,* 78.

We submit, therefore, that even though this court should hold that the regulations imposed upon applicants for permit must be reasonable and constitutional, and that such applicants have a property right which must be thus protected, the Ordinance in question was a reasonable and valid Ordinance.

Segregation of the races is much more important in a small vehicle which carries three or four passengers, than in the case of a coach on a railroad. During crowded hours, unless one of these vehicles were labeled for either white or colored, there could easily be a scramble by both white and colored seeking to engage the vehicle, which could easily result in a breach of the peace.

We respectfully submit that the prayer for the certiorari should be denied.

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